

Joint Sewer Agency Law in Kentucky

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I. Introduction

This article provides an overview of the basic requirements for the creation of a joint sewer agency in Kentucky and the resulting powers of a joint sewer agency.

II. Joint Sewer Agencies Can Be Created By All Cities In Kentucky, Other Than Cities Of The First Class

As an alternative to establishing a metropolitan sewer district, any city of the second class, together with the county in which it is located, may jointly establish a sewer agency pursuant to KRS 76.231 for the purpose of providing sewer and drainage facilities within the city and county. Additionally, any city of the second to sixth class and the county in which it is located that establish a joint sewer agency pursuant to KRS 76.231 may authorize the issuance of revenue bonds pursuant to the procedure set out in KRS 76.150 and KRS 76.160. KRS 76.233. Furthermore, under KRS 76.232, a city of the third to sixth class, together with the county in which it is located or together with the sanitation district, or any city of the second class together with the county in which it is located or together with the sanitation district, as an alternative to establishing a metropolitan sewer district under KRS 76.010, may establish a joint sewer agency for the purpose of providing sewer and drainage facilities within the city and the county or within the city and the sanitation district. The main difference between KRS 76.231 and

KRS 76.232 is that while a city of the third to sixth class can join a joint sewer agency created by a second class city under KRS 76.231, these cities can create a joint sewer agency with its county or sewer district only under KRS 76.232. On the other hand, a city of the second class can form a joint sewer agency under either KRS 76.232 or KRS 76.231.

A. Creation of Joint Sewer Agency by a City of the Second Class under KRS 76.231

Any city of the second class, together with the county in which it is located, may jointly establish a sewer agency for the purpose of providing sewer and drainage facilities within the city and the county. KRS 76.231(1). This joint sewer agency shall be established upon the enactment by both the legislative body of the city and the fiscal court of the county of identical ordinances establishing and setting out the powers of the agency. KRS 76.231 (2). Under the statute, all the powers granted to a metropolitan sewer district by KRS 76.010 to 76.279, may be granted by ordinance to the sewer agency. KRS 76.231(3). Yet, these powers may be restricted or qualified, as applied to the joint sewer agency, in order to conform to the local needs of the county and city.

After creation of the joint sewer agency, the legislative body of the city and fiscal court of the county shall establish an initial schedule of rates, rentals, and charges to be collected from all real property served by the facilities of the joint sewer agency, as provided in KRS 76.090. KRS 76.231 (4).

After the rates are initially established, a joint sewer agency may set a schedule of rates, rentals, and charges to be collected from all real property within the area served by the facilities of the joint sewer district. KRS 76.090(1). In addition, the agency may prescribe both the manner and time in which these fees are to be paid. The manner in which these fees will be collected, as well as the time line in which the fees are to be paid, can be changed by the joint sewer agency from time to time as it deems necessary.

The rate schedule developed by a joint sewer agency under KRS 76.090 may be based upon five factors:

- (1) the consumption of water on the premises connected with the facilities, taking into consideration commercial and industrial use of water; or
- (2) the number and kind of plumbing fixtures connected with the facilities; or
- (3) the number of persons served by the facilities, or
- (4) may be determined by the joint sewer agency on any other basis or classification which the agency determines to be fair and reasonable, whether similar or dissimilar to those reasons enumerated, except that the schedule shall be uniform for all residential property; or
- (5) any, combination thereof.

Additionally, this rate schedule may include additional charges for treatment of sewage with a surcharge where the sewage contains industrial wastes or other wastes in excess of limitations established by city or county regulations.

Prior to the final adoption or modification of the rate schedule for a joint sewer agency, the agency shall adopt a proposed schedule and publish notice of it pursuant to KRS Chapter 424. KRS 76.090(2). The published notice shall be dated as of the date of the first publication of the notice and shall state that the proposed or revised schedule of rates, rentals, and

charges will remain open for public inspection in the office of the joint sewer agency for thirty days from the date of the published notice. In addition, the notice shall provide that objections to the proposed rate schedule shall be in writing and filed with the joint sewer agency within the thirty day time period. The joint sewer agency shall examine and hear any and all complaints regarding the proposed schedule, may modify the proposed schedule, and shall adopt and establish a final rate schedule within sixty days after the date of the public notice. However, the rate schedule shall not become final within a county outside the city limits until the fiscal court of the county has approved it. In addition, the rate schedule shall not become final within the city of the second class until the legislative body of the city has approved it by an ordinance approved by the mayor.

The rate schedule adopted by a joint sewer agency, the county, and the city must be uniform for all property falling within the same classification. Classification of real property may be based upon the length of time the property has been in the area covered by the joint sewer agency, the drainage area within the area where the property lies, or any similar or dissimilar reasonable classification, except that the schedule shall be uniform for all residential property. However, KRS 76.231 provides that uniformity of rates for all residential property shall not be required for a period of no more than ten years from the establishment date of the joint sewer agency if the city, county and sewer agency find that local needs warrant inconsistent rates. KRS 76.231 (4).

The schedule or rates, rentals, and changes shall be established and revised by the joint sewer agency from time to time so as to produce aggregate revenues to the agency sufficient to pay: (1) the interest and principal on all revenue bonds and other obligations of the district, except construction sub-district obligations and bonds; (2) all costs and expenses of operating and maintaining the sewer and drainage systems including but not limited to salaries, wages, and fees of all officers and employees of the agency equitably allocable to operations within or for the area covered by the joint sewer agency; and (3) all costs of renewals and replacement of the sewer and drainage systems of the joint sewer agency, provided that all expenses, salaries, wages, and fees necessary or incident to

improvements, for the account of which bonds are issued, may be included as a part of the cost of the improvements and paid from the proceeds of the bonds.

Once the rate schedule has been finalized by the joint sewer agency, the agency may collect the sewer rates, rentals, and charges, or cause them to be collected and paid to it by agents it designates or makes a contract with. Whenever any sewer rate for services rendered remains unpaid for thirty days after it becomes due, the joint sewer agency shall declare the property, the owner of the property, and the user of the service delinquent until such time as all service fees are full paid. KRS 76.090(4).

Additionally, the joint sewer agency may cut off the sewer service and connection to a delinquent party. KRS 76.090(4) provides that it is unlawful for any delinquent party to use water from any public water service or system and discharge that water into a public sewer. Furthermore, the statute provides that no public water service or system shall furnish the delinquent party with water to be discharged into a public sewer. Also, the statute permits the joint sewer agency to enter into agreements with any public water company or public water service to discontinue water service to a delinquent party. Consequently, KRS 76.090 provides joint sewer agencies with powerful methods to ensure that citizens pay sewage bills.

After establishment of a rate schedule in accordance with KRS 76.090, a joint sewer agency is given some leeway in the establishment or adjustment of future sewage rates. Under KRS 76.231(5), for the purposes of establishing a schedule of rates, rentals, and changes to be collected, the legislative body of the city and the fiscal court of the county may stipulate by joint ordinance for the creation of a single rate adjustment board comprised of members of both legislative bodies. KRS 76.231(5). Upon creation of a rate adjustment board, a simple majority of the combined board membership shall be required to establish rates, rentals and charges to be collected by the joint sewer agency.

Once the joint sewer agency has been established under KRS 76.231(2) and a rate schedule has been adopted under KRS 76.231(4) and KRS 76.090, the joint sewer agency is set to begin operation. The

joint sewer agency shall be administered as a separate legal entity or by a jointly appointed administrator or joint board as set out in the establishing ordinances. KRS 76.231(6). In addition, the legislative body of any city of the third to sixth class may by ordinance elect to be within the jurisdiction of a joint sewer agency created under KRS 76.231 by a city of the second class and its county. KRS 76.231(8). Such a provision may be useful in counties that have multiple class cities and desire to have only one sewer provider rather than multiple providers or if a county and city government sought merger. To dissolve the joint sewer agency, only a joint action by the legislative body of the city and the fiscal court of the county is required. KRS 76.231(7). While cities of the second class were permitted to form joint metropolitan sewer districts with their counties under KRS 76.010, it appears that the benefit of creating a joint sewer agency arises from the ability of cities of the third to sixth class to elect to become associated with the joint sewer agency, which was not permitted under KRS 76.010.

B. Creation of a Joint Sewer Agency under KRS 76.232

In addition, any city of the second to sixth class can opt to create a joint sewer agency along with the county or sanitation district in which it is located. KRS 76.232(1). In order to establish a joint sewer agency under KRS 76.232, the legislative body of the city, the fiscal court of the county, or the governing body of the sanitation district may vote to merge any existing agency or sanitation district or any portion thereof into the jointly established sewer agency or into an existing city or county sewer agency. KRS 76.232(2). Thus, under KRS 76.232, a city of the second to sixth class can only create a joint sewer agency by merging existing sewer agencies.

Under KRS 76.322, a joint sewer agency shall be established upon the enactment of identical agreements establishing and setting out the powers of the sewer agency by all parties establishing the sewer agency. KRS 76.232(3). Any agreement enacted by a city or county shall be by ordinance. Any agreement enacted by a sanitation district shall be done in the same manner as any other official actions taken by the sanitation district. All the

powers granted to a metropolitan sewer district and cities of the first class by KRS 76.010 to 76.279 may be granted by ordinance to the joint sewer agency. The powers granted include: power to establish rates, rentals and charges; power to acquire land; power to contract with cities to connect with and use the facilities; power to construct facilities; power to make contracts; and power to borrow money, to name a few. Such powers granted to the joint sewer agency may be restricted or qualified in order to conform to the local needs of the city, county or sanitation district. KRS 76.232(4). Additionally, the joint sewer agency shall be administered as a separate legal entity or by a jointly appointed administrator, joint board, or one of the merging entities. KRS 76.232(5). Yet, this administrative power must be set out in the ordinance creating the joint sewer agency.

A joint sewer agency created under KRS 76.232 can be dissolved only by adoption of an ordinance of the legislative body of the city and the fiscal court of the county. KRS 76.232(6). Also, the ordinance creating the joint sewer agency shall be amended in the same manner as it was originally enacted, which required the enactment of identical agreements or ordinances by all parties who are a member of the joint sewer association. Moreover, similar to KRS 76.232, KRS 76.232 permits the legislative body of any city of the third to sixth class may by ordinance elect to be within the jurisdiction of a joint sewer agency.

III. Conclusion

Joint sewer agencies can be formed by cities of the second class to the sixth class through either KRS 76.231 or KRS 76.232. The joint sewer agency is established by the passing of identical ordinances by the cities and the county. The joint sewer agency may be administered as a separate legal entity or by a jointly appointed administrator, joint board, or by one of the merging entities. The ordinance shall set out the powers of the joint sewer agency, which may be the same statutory powers as metropolitan sewer districts created by cities of the first class through KRS 76.010. A joint sewer agency has the statutory authority to modify these powers to meet the needs of its local community.

About David Denton

David Denton, Senior Partner, sets the standard for the fundamental premise of **Denton & Keuler's** professional approach to the practice of law - client satisfaction. For more than 25 years, he and an ever-growing firm have enthusiastically practiced that philosophy.

Since 1969, he has maintained a litigation practice in both federal and state courts. Beginning with a background in municipal and governmental law, the firm has grown to include an array of banking, utilities, insurance, health care, and maritime clients.

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